



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2004

Ms. Jennifer Barnett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2004-3396

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200266.

The Allen Municipal Court (the "court") and the Allen Police Department (the "department"), which you represent, received a request for a specified police report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Act. We have considered your arguments and have reviewed the information you submitted.

Initially, we address the request that the court received. The Act defines "public information" as consisting of "information collected, assembled, or maintained . . . by a governmental body" or "for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). The definition of governmental body "does not include the judiciary," and thus the Act is not applicable to judicial records. *See id.* § 552.003(1)(B); *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 at 4 (1993). Therefore, to the extent that the submitted information is held solely by the court, the Act is not applicable to such information, and the Act does not require the court to comply with this request for information. *See* Attorney General Opinion

DM-166 at 1 (statutory predecessor to Act neither authorized information held by judiciary to be withheld nor required that it be disclosed).¹

To the extent, however, that the submitted information is held by the department, the Act is applicable to this request. Accordingly, we will consider whether the information is excepted from disclosure. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We agree that section 58.007(c) is applicable to the submitted information. Therefore, to the extent that the submitted information is held by the department, it must be withheld from disclosure under section 552.101 of the Act as information made confidential by law.

¹We note that certain judicial records may be open to the public under sources of law other than the Act. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are generally considered to be public); Attorney General Opinion DM-166 at 3 (public has general right to inspect and copy judicial records); Open Records Decision No. 618 at 4 (Texas courts have recognized common-law right of public to inspect and copy records of judiciary).

In summary: (1) to the extent that the submitted information is held solely by the court, the Act does not require the court to comply with this request for information; but (2) to the extent that the submitted information is held by the department, the information must be withheld from the requestor under section 552.101. As we are able to make these determinations, we need not address your claims under sections 552.103 and 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

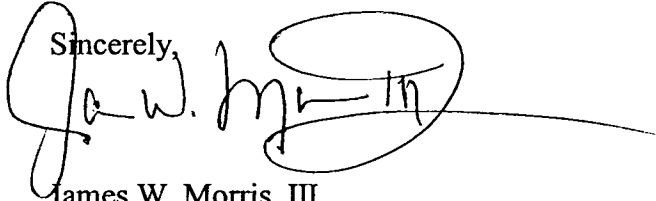
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 200266

Enc: Submitted documents

c: Ms. Linda J. Halverson
428 Saint Andrews Drive
Allen, Texas 75002
(w/o enclosures)